

O

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

THOMAS A. SEAMEN,

Plaintiff

vs.

**VALLEY HEALTH CARE MEDICAL
GROUP, INC. ET AL.,**

Defendants.

**Case No.: SA CV 13-1709-DOC
(RNBx)**

**ORDER GRANTING EX PARTE
APPLICATION FOR ENTRY OF
STIPULATED JUDGMENT [61]**

1 Before the Court is Plaintiff's Ex Parte Application for Entry of Stipulated Judgment
2 ("Application") (Dkt. 61).

3 I. Background

4 In October 2013, Plaintiff Thomas A. Seamen ("Plaintiff" or "Receiver") brought an
5 action against Defendants Valley Health Care Medical Group Inc. ("Valley Health"), Richard
6 Jeffrey Kroop, MD ("Dr. Kroop"), and Dolores Kroop ("Ms. Kroop")¹ (collectively,
7 "Defendants"). *See* Complaint ("Compl.") (Dkt. 1). In February 2015, the parties notified the
8 Court that the matter had been completely settled following a mediation with ADR panel
9 mediator John Brinsley. *See* Mediation Report (Dkt. 44) at 1. Plaintiff filed a Motion for
10 Approval of Settlement Agreement on April 6, 2015 (Dkt. 50), which the Court granted on April
11 9, 2015 (Dkt. 51).

12 The Settlement Agreement ("Agreement") consists of a series of initial recitals and
13 twenty-one specific provisions. *See generally* Settlement Agreement (Dkt. 62-2) Ex. A
14 ("Settlement Agreement"). In the sixth provision, Defendants specifically acknowledge liability
15 with respect to the underlying claims: "The judgment shall be in the amount of \$2,500,000,
16 which reflects the acknowledged liability of Defendants, in the Receiver's favor" *Id.* ¶ 6.
17 As part of the Agreement, Defendants also agreed to a payment plan whereby they would make
18 an initial payment of \$10,000 to the Receiver, make monthly payments of \$7,500 to the
19 Receiver ("Monthly Payments"), and pay an additional \$30,000 by the end of each year
20 ("Balloon Payments"). Settlement Agreement ¶ 3. With respect to the Monthly Payments, the
21 Agreement provides:

22 Defendants shall pay to the Receiver, or the Receiver's designee, assignee
23 or successor, \$7,500 per month for each month thereafter . . . Any failure to
24 pay a Monthly Payment shall be cured by payment of certified funds within
5 days without necessity of notice to Defendants. Any failure to pay or cure
shall be a default under the Note (below) and this Agreement.

25 *Id.* The Agreement states that if Defendants failed to pay Plaintiff according to this payment
26 schedule (and cure within a 5-day period), Plaintiffs would file a stipulation for entry of
27 judgment in the amount of \$2.5 million – less any payment made. *Id.* ¶ 6. In the event of an

28 ¹ The Court notes that Ms. Kroop was dismissed from the action on April 24, 2015. *See* Order Granting Joint Request for Dismissal (Dkt. 53) at 1.

1 uncured default, the parties agreed that the “declaration of the Receiver or his assignee stating
2 the uncured default and the amount of payments received shall be sufficient for entry of
3 judgment.” *Id.* Separately, in the seventh provision, the Receiver agreed to release any and all
4 “deeds of trust, UCC liens and/or other encumbrances” on Dr. Kroop’s home within 30 days of
5 the Court’s approval of the settlement. *Id.* ¶ 7.

6 The Receiver sought entry of the stipulated judgment in early May after Defendants
7 failed to make the initial \$10,000 payment and the first Monthly Payment. *See Ex Parte*
8 Application (Dkt. 54). The Court held a hearing on May 26, 2015 and allowed Defendants to
9 cure their deficiency of \$17,500. Hearing Minutes (Dkt. 57).

10 The Receiver now seeks entry of the stipulated judgment because Defendants again
11 failed to make the required Monthly Payments and cure in August, September, and October
12 2015. Application at 3; Settlement Agreement ¶ 2. Defendants do not dispute that they failed to
13 make the required payments. *See Opp’n* at 6 (“Dr. Kroop . . . is confident that all outstanding
14 payments to the Receiver will be paid this month.”); Declaration of Richard Jeffrey Kroop, MD
15 (“Kroop Decl.”) (Dkt. 62-2) ¶ 9.

16 On September 21, 2015, Francis Plaintiff’s counsel (“Plaintiff’s counsel”) informed Dr.
17 Kroop and Edwin Defendants’ counsel (“Defendants’ counsel”) of his intent to file a request for
18 entry of the stipulated judgment. Declaration of Edwin R. Defendants’ counsel (“Defendants’
19 counsel Decl.”) (Dkt. 62-1) Ex. A. at 3. Defendants’ counsel informed Plaintiff’s counsel that
20 Dr. Kroop would cure the deficiency right away. *Id.* at 2. Defendants provided the Receiver with
21 a check for \$7,500 in an effort to partially cure the default; however, the bank returned the
22 subsequent check for insufficient funds. Declaration of Thomas A. Seamen (“Decl. Seamen”)
23 (Dkt. 61-1) ¶ 3.

24 On September 28, 2015, Defendants’ counsel sent an email to Plaintiff’s counsel
25 inquiring about the status of Dr. Kroop’s default and asking for an official copy of the release on
26 the liens. Defendants’ counsel Decl. Ex. A. at 1. Plaintiff’s counsel sent the copy of the recorded
27 releases the same day. He also wrote in his email that “Dr. Kroop is in default under the
28

1 Agreement and the Receiver intends to act in accordance with his notice regarding his
2 remedies.” *Id.*

3 Plaintiff then filed the instant Application on October 6, 2015 seeking \$2,457,500
4 pursuant to the parties’ stipulated judgment. Defendants opposed the following day (Dkt. 62).
5 The Court then allowed Plaintiffs to file a Reply and Defendants to file a Sur-Reply, which the
6 parties did on October 26 and October 30, 2015 (Dkts. 64, 65). The Court held a hearing on
7 December 14, 2015 (Dkt. 70).

8 **II. Legal Standard**

9 Courts have long recognized that settlement agreements “‘are highly favored as
10 productive of peace and good will in the community,’ as well as ‘reducing the expense and
11 persistency of litigation.’” *Neary v. Regents of Univ. of Cal.*, 3 Cal. 4th 273, 277, 10 Cal.Rptr.2d
12 859, 834 P.2d 119 (1992) (quoting *McClure v. McClure*, 100 Cal. 339, 343 (1893)). Further,
13 “‘where the parties have stipulated to the nature or amount of a remedy, it is proper for the trial
14 court to honor the parties’ agreement unless it finds that to do so would be contrary to a rule of
15 law or public policy.” *DVD Copy Control Ass’n, Inc. v. Kaleidescape, Inc.*, 176 Cal. App. 4th
16 697, 725 (2009). Stipulated judgments are “‘privately negotiated remedies” and courts “‘may not
17 remake the bargain to the advantage of one party for no reason other than the party has become
18 dissatisfied with the agreement.” *Id.* Disputes “‘concerning a settlement agreement are governed
19 by applicable state contract law.” *U.A. Local 342 Joint Labor-Management Committee v. South*
20 *City Refrigeration, Inc.*, No. C-09-3219 JCS, 2010 WL 1293522, at *2 (N.D. Cal. 2010).

21 **III. Discussion**

22 **A. Reasonableness of Stipulated Judgment**

23 As noted above, the parties do not dispute that Defendants failed to comply with the
24 agreed-upon payment plan. Under the clear terms of the Agreement, a breach and uncured
25 default entitles Plaintiff to seek entry of the parties’ stipulated judgment. Settlement Agreement
26 ¶ 3. While Defendants did not specifically argue the stipulated judgment amount was
27 unreasonable, the Court finds it prudent to consider this issue.
28

1 A court in this district previously enforced entry of a stipulated judgment in a case
 2 involving virtually identical facts. *See Rose v. Enriquez*, No. CV 11-07838, 2012 WL 6618261
 3 (C.D. Cal., Dec. 19, 2012). In *Rose*, the parties entered a stipulated agreement whereby
 4 defendant Michael Enriquez (“Enriquez”) was to pay plaintiffs in four installments. When
 5 Enriquez failed to comply with the payment plan, plaintiff moved for entry of stipulated
 6 judgment, which required Enriquez to pay \$3.5 million to plaintiff. *Id.* at *2. In concluding there
 7 was a reasonable relationship between the stipulated judgment of \$3.5 million and the breach of
 8 the settlement agreement, the court highlighted “the proof offered, [defendant Enriquez’s]
 9 admission of liability, and the extended mediation proceedings during which the settlement
 10 agreement was negotiated” *Id.*

11 Further, the *Rose* court considered and rejected the argument that plaintiffs should only
 12 be able to recover “damages incurred as a result of delay in making any of the installment
 13 payments due under the parties’ settlement agreement.” *Id.* (citation omitted). Judge Pregerson
 14 reasoned that:

15 If that were the rule, a stipulated judgment could never be more than the
 16 settlement amount plus interest and other economic consequences. Such a
 17 rule would hamstring parties’ ability to craft pragmatic settlement
 18 agreements that reflect their priorities and to create incentives among
 19 themselves for the achievement of their goals. Where, as here, parties
 20 mutually agree upon the liability of one party and the resulting amount of
 21 damage caused by that party, a stipulated judgment in the amount of those
 22 damages will not be unreasonable.

23 *Id.*²

24 The *Rose* decision is directly applicable here. The parties, like the parties in *Rose*,
 25 negotiated and consented to the settlement agreement after meditation proceedings.
 26 Additionally, as in *Rose*, Defendants admitted liability in the Agreement itself. Indeed, the
 27 Defendants’ admissions were expressly linked to both the Receiver’s claims and the monetary
 28

² The *Rose* court also relied on this line of reasoning in distinguishing its decision from the California appellate court’s
 decision in *Greentree Financial Court, Inc. v. Execute Sports, Inc.*, 163 Cal. App. 4th 495, 497 (2012). In *Greentree*, the
 court declined to enforce a stipulation for entry of judgment because the judgment bore “no reasonable relationship to the
 range of actual damages the parties could have anticipated would flow from a breach of their settlement agreement.” *Id.* at
 497–98 (quoting *Sybron Corp. v. Clark Hosp. Supply Corp.*, 76 Cal. App. 3d 896 (1978)). Specifically, while there was “no
 admission of liability” in *Greentree*, the agreement at issue in *Rose* contained “an express statement of Defendants’ liability.”
Rose, 2012WL 6618261, at *2.

1 amount at issue: “As part of the instant Agreement, Defendants acknowledge liability of
 2 \$2,500,000 on all claims alleged by the Receiver.” Settlement Agreement at 1 (“Recitals”); *see*
 3 *also id.* ¶ 6 (“The judgment shall be in the amount of \$2,500,000, which reflects the
 4 acknowledged liability of Defendants . . .”). Considering Defendants acknowledged their
 5 wrongdoing in the amount of \$2.5 million, and because the parties mutually contemplated and
 6 agreed on this remedy in the event of an uncured default, the Court finds the stipulated judgment
 7 to be reasonable. *Id.*³

8 **B. Material Breach**

9 Defendants offer two separate arguments why the stipulated judgment should not be
 10 enforced: (1) the Receiver materially breached the Agreement and therefore the Defendants’
 11 non-performance was excused, and (2) Defendants’ non-performance was due to circumstances
 12 out of their control. Opp’n at 4–6. Neither of these arguments withstands scrutiny.

13 “To excuse performance by one party to a contract, the breach by the other party must be
 14 material.” *Card Tech Int’s, LLC v. Provenzano*, No. CV 11-2434 DSF (PLAx), 2012 WL
 15 2135357, at *20 (C.D. Cal. June 7, 2012) (citing *Jenkins, Inc. v. Walsh Bros.*, 776 A.2d 1229,
 16 1234–35 (Me. 2001) (citing *Brown v. Grimes*, 192 Cal. App. 4th 265, 277 (2012))). A “‘material’
 17 breach is the non-performance of a duty ‘that is so material and important as to justify the
 18 injured party in regarding the whole transaction as at an end.’” *Card Tech*, 2012 WL 2135357,
 19 at *36 (quoting *Jenkins*, 776 A.2d at 1234). Whether a “partial breach of a contract is material
 20 depends on ‘the importance or seriousness thereof and the probability of the injured party
 21 getting substantial performance.’” *Brown*, 192 Cal. App. 4th at 278. Further, the determination
 22 of “whether a promise is an independent covenant, so that breach of that promise by one party
 23 does not excuse performance by the other party, is based on the intention of the parties as
 24 deduced from the agreement.” *Id.* at 279.

25
 26 ³ The *Rose* court also relied on this line of reasoning in distinguishing its decision from the California appellate court’s
 27 decision in *Greentree Financial Court, Inc. v. Execute Sports, Inc.*, 163 Cal. App. 4th 495, 497 (2012). In *Greentree*, the
 28 court declined to enforce a stipulation for entry of judgment because the judgment bore “no reasonable relationship to the
 range of actual damages the parties could have anticipated would flow from a breach of their settlement agreement.” *Id.* at
 497–98 (quoting *Sybron Corp. v. Clark Hosp. Supply Corp.*, 76 Cal. App. 3d 896 (1978)). Specifically, while there was “no
 admission of liability” in *Greentree*, the agreement at issue in *Rose* *i* contained “an express statement of Defendants’ liability.”

1 Here, Defendants argue the Receiver's failure to release liens on Dr. Kroop's home
 2 within 30 days of approval of the settlement, as required by provision 7 of the Agreement,
 3 constitutes a material breach that excused their performance to make the Monthly Payments.
 4 Opp'n at 4–5. The Receiver responds that his failure to timely release the liens from Dr. Kroop's
 5 home was an independent provision that “does not serve to excuse Defendants' failure to make
 6 payments.” Reply at 4.

7 Based on both the language of the Agreement and the evidence presented, the Court finds
 8 the Receiver's failure to release liens on Dr. Kroop's home was not a material breach that
 9 excused Defendants' obligation to make payments. Looking first to the text of the Agreement,
 10 there is no indication that the stipulated judgment clauses in provision 6 of the Agreement was
 11 conditioned on or “integrally related” to the Receiver's obligations to release liens in provision
 12 7.⁴ See *530 Hewitt Subsidiary, LLC v. P.G.C.A. Holdings, Inc.*, 2014 WL 3406295, at *7 (Cal.
 13 Ct. App. July 14, 2014). Put differently, it is not apparent from the text of the Agreement why
 14 the Receiver's failure to timely release a lien on Dr. Kroop's home should excuse Defendants'
 15 failure to make the required payments in August, September, and October 2015. The stipulated
 16 judgment provision makes no reference to the release of liens; rather, it is tied to the payment
 17 plan schedule outlined in provision 3.

18 Further, there is no strong logical connection between the stipulated judgment and release
 19 provisions. The stipulated judgment amount of \$2.5 million corresponds to Defendants'
 20 acknowledged liability for all claims alleged by the Receiver. Therefore, it follows that
 21 Defendants agreed to the stipulated judgment provision in exchange for a release of the claims
 22 against them.⁵ Thus, “based on the intention of the parties as deduced from the agreement,” the
 23 Receiver's breach is an “independent covenant” that does not excuse the Defendants' non-
 24 performance. *Brown*, 192 Cal. App. 4th at 278–279.

25
 26 ⁴ In their Opposition, Plaintiffs cite to California Civ. Code § 1439, a provision dealing with conditions precedent in
 27 contracts. However, “it is the law of this circuit and the state of California that ‘[c]onditions precedent are not favored and the
 28 courts will not construe stipulations as conditions unless required to do so by plain, unambiguous language.’” *Southland Corp.*
v. Emerald Oil Co., 789 F.2d 1441, 1444 (9th Cir. 1986) (citation omitted). Because the language does not suggest the two
 provisions were conditioned on one another, the Court declines to treat them as such.

⁵ The parties' release of claims is provided in provision 9 of the Agreement.

Defendants have not provided the Court with persuasive extrinsic evidence that the Receiver's failure to release liens on Dr. Kroop's home rises to the level of a material breach. Dr. Kroop now states the release of liens on his home was an "indispensable part" of the Agreement, and that "Defendants strenuously bargained for the prompt release of Medical Capital's liens on the aforementioned property because my wife and I were in the process of refinancing our home." Kroop Decl. ¶ 5; *see also* Sur-Reply at 6 (the Receiver's failure to release the liens "deprived Dr. Kroop and his wife "of the opportunity to refinance their home"). Sur-Reply at 6. But these statements by themselves are insufficient for the Court to conclude the release provision was a material provision.

In their moving papers, Defendants argue they made "repeated demands" to the Receiver to release the liens. *See* Opp'n at 2; Sur-Reply at 4. The only evidence Defendants offer in support of this argument is the email chain from their counsel to Plaintiff's counsel in late September. But the fact that Defendants asked about the releases on September 28, 2015 –*after* Defendants breached their duties to make the Monthly Payments in August and September – is not compelling evidence the release provision was material. A review of the email chain suggests the opposite. When Plaintiff's counsel emailed Defendants' counsel on September 21 to notify him of the Receiver's intent to file for entry of stipulated judgment, Defendants' counsel simply acknowledged the default and conveyed his client's intent to cure – he did not raise any arguments related to the release of liens. Plus, even after they learned in late September the liens had been released, Defendants again failed to make the required Monthly Payment on October 1 (as well as the November or December Monthly Payments).⁶ Therefore, Defendants have not shown the Receiver's non-performance was "so material and important as to justify" their failure to make payments under the Settlement Agreement. *Card Tech*, 2012 WL 2135357, at *36 (quoting *Jenkins*, 776 A.2d at 1234).

C. Impossibility/Impracticability

Defendants' other argument – that their performance was discharged on impossibility or impracticability grounds – also fails. Specifically, Defendants contend that "Defendants'

⁶ Further, as the Court learned at the hearing, despite Dr. Kroop's representations that "all outstanding payments will be paid" by October, *see* Kroop Decl. ¶ 9, the payments have not yet been made as of December 14, 2015.

1 inability to make the aforementioned installments were out of their control, as a recent US Bank
2 closure deprived Dr. Kroop of income from his medical practice for almost 7 weeks.” Opp’n at
3 5. But, as a court in this Circuit explained, “a party may not generally rely on an impossibility
4 defense to justify its failure to make payments, as making payments is not objectively
5 impossible or impracticable.” *Hebrank v. Linmar Mgmt., Inc.*, No. 3:13-cv-2179-GPC-JMA,
6 2014 WL 3741634, at *4 (S.D. Cal. July 29, 2014). Defendants have not presented any
7 compelling reason for this Court to stray from this general rule. Accordingly, the Court finds
8 that Defendants cannot invoke an impossibility or impracticability defense to justify their failure
9 to make the required payments under the Agreement.

10 **D. Disposition**

11 For the foregoing reasons, Plaintiff’s Application for Entry of Stipulated Judgment is
12 GRANTED.

13 

14 DAVID O. CARTER
15 UNITED STATES DISTRICT JUDGE

16 Dated: December 16, 2015
17
18
19
20
21
22
23
24
25
26
27
28